Detroit Newspapers Agency, d/b/a Detroit Newspapers *and* Detroit Mailers Union No. 2040 International Brotherhood of Teamsters, AFL–CIO; Detroit Typographical Union No. 18, Communications Workers of America, AFL–CIO; GCIU Local Union No. 13N, Graphic Communications International Union, AFL–CIO; Teamsters Local No. 372, International Brotherhood of Teamsters, AFL–CIO. Case 7–CA–40012

January 14, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND HURTGEN

On March 10, 1999, Administrative Law Judge Karl H. Buschmann issued the attached decision. The Respondent filed exceptions, a supporting brief, and a reply brief; the General Counsel and the Charging Parties each filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision[1] and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Detroit Newspapers Agency, d/b/a Detroit Newspapers, Detroit, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Linda Rabin Hammell, Esq., for the General Counsel.

Jeremy P. Sherman and *Kristin E. Michaels, Esqs. (Seyfarth, Shaw, Fairweather & Geraldson)*, of Chicago, Illinois, for the Respondent.

Samuel C. McKnight, Esq. (Klimist, McKnight, Sale, McClow & Canzano, P.C.), of Southfield, Michigan, for the Charging Party.

DECISION

STATEMENT OF THE CASE

KARL H. BUSHMANN, Administrative Law Judge. This case was tried in Detroit, Michigan, on January 21–23, and March 24–26, 1998, on a complaint dated July 25, 1997, alleging that the Respondent, Detroit Newspaper Agency, d/b/a Detroit Newspapers, unilaterally and without agreement with the Unions implemented its final offer affecting changes in wages, hours, and other terms and conditions of employment for unit employees in violation of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). The charges in support of the complaint were filed by the Unions on July 10, 1997.[1]

The Respondent filed an answer admitting the jurisdictional allegations in the complaint and denying the substantive allegations of unfair labor practices and raising affirmative defenses.

On the entire record, including my observation of the witnesses and after considering the briefs filed by the General Counsel, the Respondent, and the Charging Parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Detroit Newspaper Agency, d/b/a Detroit Newspapers (DNA), located at 615 West Lafayette, Detroit, Michigan, has been engaged in the publishing and circulation operation of all nonnews and noneditorial departments of the Detroit News, Inc. and the Detroit Free Press.

The Detroit Free Press, Inc. is a daily newspaper owned by Knight-Ridder Inc., a news, information, and communications company headquartered in Miami, Florida. The Detroit News, Inc. is a daily newspaper owned by Gannett Co., Inc., a news, information, and communications company headquartered in Arlington, Virginia. DNA was established pursuant to a partnership agreement between the two daily newspapers, under the Federal Newspaper Preservation Act, whereby DNA is responsible for all financial, production, composing, printing distribution, information systems, human resources, and the marketing for the News and the Free Press.

With gross revenues in excess of $500,000 and purchases and receipts at its Michigan facility of goods and materials in excess of $50,000 from points outside the State, the Respondent is admittedly an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

The six Charging Parties, Detroit Typographical Union Local 18, Detroit Mailers Union Local 2040, GCIU Local No. 13N, and Teamsters Local No. 372, along with Graphic Communications Local No. 289 and The Newspaper Guild Local 22, comprise the Metropolitan Council of Newspaper Unions (Council of Unions). Each of the Charging Unions has been a labor organization within the meaning of Section 2(5) of the Act.

[1] The following correction is made to the judge's decision at sec. III, par. 19: the aggregate circulation of the Detroit News and the Detroit Free Press exceeded 1 million; not 1 billion.

[2] We agree with the judge that the Respondent has not met its heavy burden of showing that the Unions' publication of the Detroit Sunday Journal constituted clear and present danger of a conflict of interest interfering with the collective-bargaining process. *Alanis Airport Services*, 316 NLRB 1233 (1995); and *Bausch & Lomb Optical Co*., 108 NLRB 1555 (1954). As the judge found, the Unions' newspaper is an interim publication which the Unions have made an unequivocal commitment to shut down once the labor dispute is resolved. *The Adrian Daily Telegram*, 214 NLRB 1103 fn. 1 (1974). It has not been established that the Unions' operation of its newspapers—for this specifically limited duration—would present a conflict of interest which would jeopardize good-faith bargaining. Id.

In adopting the judge's conclusions, we find it unnecessary to rely on his findings with respect to the comparative size and success of the Unions' publishing enterprise and that of the Respondent's. We further find it unnecessary to pass on whether the Respondent waived the conflict-of-interest defense by not raising it until the instant proceedings.

[1] The complaint in Case 7–CA–39637 was severed from this case pursuant to the motion by the General Counsel (Tr. 691; G.C. Exh. 18).

II. FACTS

This case is the third in a series of cases arising out of a labor dispute between the Unions and the Respondent. On June 19, 1997, Administrative Law Judge Thomas R. Wilks issued a decision in Case 7–CA–37361 et seq., finding several violations of Section 8(a)(1) and (5), inter alia, that the strike which began on July 13, 1995, was an unfair labor practice strike.[2] The second case, 7–CA–39522, decided by Administrative Law Judge William G. Kocol on November 7, 1997, involved a finding of violations of Section 8(a)(1) and (3) of the Act by Respondent's failure to offer reinstatement to strikers who had made unconditional offers to return to work.[3]

In this case the complaint alleges that the Respondent implemented unilaterally and without having reached an agreement, its final offer affecting the employees' working conditions, while the prior violations of the Act as found in the said cases remained unremedied. In support of the case in chief, the General Counsel called no witnesses and instead relied on two stipulations of facts, the prior cases finding violations of the Act and several exhibits (Tr. 24, G.C. Exhs. 2–23).

According to the stipulations, the record shows that the Respondent implemented the terms and conditions of employment for its bargaining unit employees as contained in its final offers to the Unions in March 1997. By declaring an impasse even though its unfair labor practices remained unremedied, the Respondent violated the Act, according to the General Counsel. As stated in the stipulation, the "General Counsel contends that these implementations were unlawful because no valid impasse was reached due to the unremedied unfair labor practices identified in Paragraph 14 of the Complaint" (G.C. Exh. 19).

The Respondent's defense, in addition to raising issues of due process because of the General Counsel's reliance on the prior decisions by Judges Wilks and Kocol, raises the issue for the first time in this case that the Unions were disqualified from acting as bargaining representatives of the unit employees due to their publication of the Sunday Journal, a poststrike publication.

The issues are accordingly as follows:

1. Did the Respondent violate the Act by implementing its final offers notwithstanding the unremedied unfair labor practice charges.

2. Was the Respondent denied due process by the taking of administrative or judicial notice of the prior decisions by Judges Wilks and Kocol.

3. Does the publication by the Unions of an interim newspaper like the Sunday Journal create a conflict of interest so as to disqualify their status as collective bargaining representatives?

The stipulated facts are set forth as follows (G.C. Exh. 19):

> 1. The Free Press is a daily newspaper owned by Knight-Ridder, Inc., a news, information and communications company headquartered in Miami, Florida. The News is a daily newspaper owned by Gannett Co., Inc., a news, information and communications company headquartered in Arlington, Virginia.
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> 2. Under the partnership agreement set forth in Paragraph 2 of the Complaint in Case No. 7–CA–40012, the DNA was created. The DNA is governed by a five member board of directors; three are appointed by Gannett and two by Knight-Ridder. Its president and chief executive officer is Frank Vega. Its vice president for labor relations is Timothy Kelleher.
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> 3. The DNA manages all non-editorial functions for the two newspapers. Among the functions it performs are all financial, production, composing, printing distribution, information systems, human resources and the marketing for the News and the Free Press. Under the Newspaper Preservation Act, the editorial departments of the two newspapers are supposed to remain separate and distinct.
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> 4. Since the creation of the DNA, John Jaske, senior vice president of labor relations and assistant general counsel of Gannett, has served as the chief spokesperson for the DNA in negotiations with the various unions. Jaske has been present at most, but not all negotiation sessions with the unions.
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> 5. The six striking Unions, Local 18, Local 2040, Local 13N, and Local 372, along with Graphic Communications Local No. 289 and Local 22, The Newspaper Guild, comprise the Metropolitan Council of Newspaper Unions (Council of Unions).
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> 6. Bargaining with the individual unions commenced on February 20, 1995 for successor labor contracts to replace the expiring agreements with the Charging Party Unions—Mailers Local 2040, GCIU Local 13N, DTU Local 18, and Teamsters Local 372.
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> 7. In Case 7–CA–37361 et al., General Counsel alleged that Respondent Detroit Newspapers, along with the Detroit News, Inc. and the Detroit Free Press, Inc., breached their bargaining obligations imposed by the Act by specific conduct during the negotiations. On June 19, 1997, Administrative Law Judge Thomas R. Wilks issued a decision and recommended order in Case 7–CA–37361, et al. in which he found several violations of Section 8(a)(5) and (1) of the Act. Judge Wilks also found that the strike which commenced on July 13, 1995, was an unfair labor practice strike at its inception and was prolonged by the subsequent threat to permanently replace unfair labor practice strikers. Exceptions and cross-exceptions to the administrative law judge's decision have been taken and the matter is currently pending before the National Labor Relations Board.
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> 8. One of the violations found by Judge Wilks in Case 7–CA–37361 et al. involved the allegation that DNA abrogated an agreement to participate in a two-tier joint bargaining arrangement. From the inception of bargaining, the Council of Unions had made two tier joint bargaining a high priority. The terms of DNA's agreement to participate in a two tier joint bargaining format, and its alleged abrogation of that agreement, have been litigated as part of 7–CA–37361 et al.
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> 9. About six weeks into the strike, DNA announced that it had begun to employ permanent replacements. The striking unions have consistently taken the position that replacement workers should be displaced from active employment, if necessary, to reinstate returning strikers.
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> 10. About February 13, 1997, Mailers Local 2040 and Teamsters Local 372 made unconditional offers to return to work on behalf of each and every bargaining unit employee that went on strike.

[2] The decision has been affirmed by the full Board, 326 NLRB 700 (1998).

[3] The decision has been affirmed by the Board in 326 NLRB 782 on August 27, 1997.

11. About February 14, 1997, DTU Local 18 made an unconditional offer to return to work on behalf of each and every bargaining unit employee who went on strike.

12. About February 15, 1997, GCIU Local 13N made an unconditional offer to return to work on behalf of each and every bargaining unit employee who went on strike.

13. Throughout the bargaining, DNA and Charging Party Unions were unable to reconcile their differences over the two-tier (joint bargaining) bargaining format as litigated before ALJ Wilks, and the status of replacement workers. The Charging Party Unions repeatedly demanded that DNA agree to reinstate alleged unfair labor practice strikers to their former jobs, displacing, if necessary, replacement workers.

14. During bargaining sessions with the respective Charging Party Unions on February 26, March 6, and March 11, 1997, DNA spokesperson Jaske notified the Charging Party Unions that by meeting with them, DNA was not waiving its position that the involvement of the Charging Party Unions in the continued publication of The Detroit Sunday Journal constituted a conflict of interest.

15. On March 7, 1997, DNA notified DTU Local 18 of its implementation of terms and conditions of employment for bargaining unit employees pursuant to its final offer. This implementation resulted in changes in mandatory subjects of bargaining.

16. On March 19, 1997, DNA notified Teamsters Local 372 of its implementation of terms and conditions of employment for bargaining unit employees pursuant to its final offer. This implementation resulted in changes in mandatory subjects of bargaining.

17. On March 21, 1997, DNA notified Mailers Local 2040, and GCIU Local 13N, respectively, of its implementation of terms and conditions of employment for bargaining unit employees pursuant to its final offer. This implementation resulted in changes in mandatory subjects of bargaining in each of the respective bargaining units.

III. DISCUSSION

Although the specifics of the unilateral changes in the mandatory subjects and specifically how the changes affected the wages, hours and working conditions of the unit employees need not be determined at this stage of the proceeding, it is clear that the Respondent's final offers proposed to the Unions in March 1997 significantly affected the wage rates of the unit employees (Tr. 22). The Unions had opposed the implementation of the changes, but the Respondent, claiming an impasse during the negotiations, effectuated its final offers.

The Respondent did not contest the factual scenario that the unilateral changes were made while the unfair labor practices found in the two prior decisions remained unremedied. It is also clear that the Respondents' violations of the Act as found on the prior decisions by Judges Wilks and Kocol are serious and profoundly affect the bargaining relationship of the parties as well as the Section 7 rights of the employees. The violations included Respondent's failure and refusal to bargain in good faith in violation at Section 8(a)(1) and (5) of the Act; the failure and refusal to furnish certain relevant information requested by the Unions, a violation of Section 8(a)(1) and (5) of the Act, informing employees who were engaged in an unfair labor practice strike that they would be permanently replaced, a violation of Section 8(a)(1) of the Act, and the failure to offer reinstatement to strikers who had made unconditional offers to return to work, a violation of Section 8(a)(1) and (3) of the Act.

The law is clear, while an employer who has acted in good faith may implement its final offer if an impasse is reached, the same employer is obviously precluded from doing so if he has failed to remedy any unfair labor practices. *CJC Holdings,* 320 NLRB 1041 (1996); *Circuit-Wise*, 309 NLRB 905 (1992); *Colombian Chemicals Co.,* 307 NLRB 592 (1992), enfd. 993 F.2d 1536 (4th Cir. 1993).

I accordingly find that General Counsel has made out a prima facie case that the Respondent violated Section 8(a)(1) and (5) of the Act as charged in the complaint when it unilaterally implemented its final offers.

Turning now to the Respondent's affirmative defenses, it is important to note that the General Counsel's prima facie case is principally based on uncontested facts, stipulated evidence and a reliance upon the prior decisions involving the same employer.

The Respondent initially challenged the General Counsel's prima facie on procedural due process grounds, because of the General Counsel's reliance "Upon ALJ Wilks' and ALJ Kocol's decisions, rather than competent evidence, to establish the evidence of unremedied unfair labor practices." The Respondent advanced the same argument in the prior case. There, the due process argument citing case law, was rejected. And I do so here for the same reasons. The Respondent's argument would lead to the absurd result, that the General Counsel would either have to relitigate the issues here even though they were fully litigated and decided in the prior decisions or the resolution of the issues here would have to await final resolutions of the prior decisions, including appellate review. The Respondent here argues that the decisions by administrative law judges are recommended decisions and the Board's decisions are not self enforcing but require an order from a Federal circuit court. Significantly, the Board resolved the issue in *Detroit Newspapers,* 326 NLRB 782 fn. 3, where it stated that it reviewed the case in the light of its prior decision in 326 NLRB 700. I accordingly find the due process argument to be without merit.

The Respondent next argues in this case for the first time that its unilateral actions in March 1997 "were lawful because the Unions were disqualified from acting as the bargaining representative of unit employees due to their post-strike publication of the Sunday Journal in conjunction with an advertiser and subscriber boycott."

The Respondent makes this argument even though the Detroit Sunday Journal had come into existence as early as November 1995, and even though the Respondent has since then engaged in extensive bargaining for successor contracts with the Unions since February 20, 1995. The record shows that Respondent's work force includes employees who had returned to work after the strike and certain unit employees who had not joined the strike. The Unions have continuously represented those unit employees who were so employed without objection by the Respondent.

According to the stipulated facts, not until the bargaining sessions in early 1997, did the Respondent notify the Unions of the conflict of interest issue. More specifically, on February 26, 1997, DNA first informed the Detroit Typographical Union No. 18 (on March 6 Teamsters Local 372, on March 11 Detroit Mailers Union No. 2040, and on March 12 GCIU Local 13N) that it was not waiving its position that the involvement of the

Charging Party Unions in the continued publication of the Detroit Sunday Journal constituted a conflict of interest (Tr. 26, G.C. Exh. 19).

Yet in its letters in February and March 1997 to the Unions, informing them of the impasse and the intent to implement the final offers, the Respondent did not raise the issue of a conflict of interest. The record shows that DNA has never withdrawn its recognition from the Unions or filed a petition to decertify them. The Respondent has not made a request that the Unions discontinue their publication of the Sunday Journal. It is uncontested in the record that the Respondent advanced the "conflict of interest" argument in the prior case (326 NLRB 782) but then abandoned the argument (Tr. 622). Significantly, on March 27, 1997, the Respondent has filed charges with the National Labor Relations Board accusing the Unions of violations of Section 8(b)(3). The Respondent's position implicitly acknowledged the status of the Unions as the collective-bargaining representatives for the unit employees. In *Quality Inn Waikiki,* 272 NLRB 1 (1984), enfd. 783 F.2d 1444 (9th Cir. 1986), the Board found that the conflict-of-interest argument had been waived by the company. The Respondent has waived the conflict-of-interest argument also here not only by failing to raise the issues as noted above, but by affirmatively dealing with the Unions as the appropriate collective-bargaining representatives and by initially raising and then waving the defense in the prior decision involving the same parties.

Moreover, I also find that Respondent's defense is without merit under the circumstances of this case. The issues boils down to a question of whether the Unions cannot properly represent the unit employees at DNA because it launched a publication known as the Detroit Sunday Journal, which is published once a week on a temporary basis during the pendency of the labor dispute by union members.

The record clearly shows that the Sunday Journal is a temporary publication which will be promptly discontinued after the current labor dispute is over. Moreover, the Sunday Journal a nonprofit operation, published once a week by union members without actual pay for their work when compared to the two daily papers published by the Respondent can hardly be considered to be competitive. The Respondent's effort to establish that the Unions' weekly paper is a competitive venture is at first blush an appealing argument, but when considered in the context of the entire labor dispute and the struggles between the parties, it is no more than a resourceful argument by the Respondent to escape its legal and ethical responsibilities.

The proposition that the Sunday Journal is a limited exercise undertaken by the Unions for the duration of the labor dispute is questioned by the Respondent who argues that the idea of an interim strike newspaper has changed and that its publishers can always change their minds about the temporary nature of the Sunday Journal. In this regard, the record could not be more convincing about the true nature and intentions of the Unions. Article II of the Articles of Incorporation of the Sunday Journal provide that the purpose of the corporation "is to publish an interim Sunday newspaper during the pendency of the labor dispute" and that upon "termination of the pending labor dispute this corporation will cease its publication." Article VI provides in pertinent part: "This corporation is intended to exist only during the pendency of the current labor dispute between the Detroit Newspapers and the six listed labor unions" (G.C. Exh. 24).

The bylaws similarly provide for an interim newspaper during the labor dispute: "It is intended that the publication of this newspaper will cease upon the termination of the labor dispute and the corporation will be dissolved within a reasonable time thereafter." And its "board of directors *shall* dissolve the corporation within a reasonable time after the termination of the current labor dispute." (G.C. Exh. 26.)

The bylawss were subsequently amended to clarify the Unions' position after their members made the unconditional offers to return to work and were not reinstated. The term strike was deleted and the emphasis remained upon the current labor dispute (G.C. Exh. 27). Moreover, to further emphasize the not-for-profit motive of the corporation the bylaws provide for distribution of the assets upon dissolution to tax-exempt charitable organizations, and not to any publishing enterprise (G.C. Exh. 27, § 11.03).

The corporate directors of the Detroit Sunday Journal, representing the six Unions, have repeatedly committed themselves to the dissolution of the paper once the labor dispute ended. In letters, contracts and other documents, the Unions have made it clear that their intentions are to shut down the operation as soon as the numbers were reinstated (G.C. Exhs. 29, 30, 31, and 32).

The unambiguous and credible testimony of Alfred Derey, director and vice president of the publication, as well as chairman of the Metropolitan Council of Newspaper Unions also reflects the firm, resolve and determination to close the operation of the Sunday Journal once the strikers have been reinstated and the labor dispute been resolved.

Finally, in terms of comparative data, the Detroit Sunday Journal is not even a "David and Goliath" by comparison, even though the Respondent describes the union paper as a business competitor pointing to the following evidence: With a startup cost of $1.2 million in a leased space costing $4000 per month and purchases of computers of about $80,000 at a printing cost of $57,000 per week, the Sunday Journal has a weekly circulation capable of 300,000 copies. Although it existed through subsidies by the Unions, it operated in 1996 and 1997 from its own cash flow. The paper is distributed through house delivery, sales of single copies and by mail. It is also available on the World Wide Web. The Respondent further argues that it is significant that the content of the Sunday Journal is not limited to union related news, but includes international and national news, columns relating to music, theater, food, finance, sports, editorials, and other topics typically associated with ordinary newspapers. According to the Respondent the Sunday Journal competes for journalistic and editorial distinction, it carries advertising and is often available on vending racks.

Nevertheless, the Respondent does not contest that the Sunday Journal is published only once a week with a press run of 45,000, compared to the Detroit News and Free Press which are published daily. Nor is it contested that the Sunday Journal is a not-for-profit enterprise and published by union members as opposed to paid employees. In contrast to the Sunday Journal, Respondent's testimony shows that the circulation of the News was about 350,000 and the Free Press about 520,000. With the addition is the Sunday circulation it exceeded 1 billion. The Saturday's circulation is around 800,000. The Respondent's 1997 progress report, reflects a combined Sunday circulation of 769,494 in March 1996 and 829,178 in September 1997, plus a combined daily circulation of 576,698 in March 1996 to 631,262 in September 1997 (G.C. Exh. 4). According to the Union's comparison this shows that Respondent's *weekly* circu-

lation by far exceeds the *yearly* output of the Sunday Journal. In a comparison of paid issues, the disparity is even greater because the Sunday Journal had in November 1995, 20,000 paid copies which decreased to a more 14,000 per week at the time of the trial. In contrast, the DNA circulation has increased in 1996 and 1997. DNA has 728 computers, the Free Press 849 and the News a similar number compared to the Journal's 18 computers. A perusal of the number and size of advertising in the Respondent's papers is so voluminous and large so as to dwarf those in the Sunday Journal (R. Exhs. 41–47, G.C. Exh. 73). Respondent's operations reflect checking account balances exceeding $1 million (G.C. Exh. 72).

Significantly, there is no evidence in the record in any of the written material and documentation which mentioned directly or indirectly that the Sunday Journal was perceived by Respondent as a competing newspaper except for Respondent's counsel's argument, and the testimony of Respondent's witnesses.

Finally, the Respondent argues that irrespective of the comparative insignificant size of the Union's operation, it is a business, which attempts to compete in the same business as the Respondent's papers. Or in other words, it "is not the degree of success of the Union's competition, but rather whether the competition, even if indirect, threatens the collective bargaining process." Relying on *Bausch & Lomb Optical Co.*, 108 NLRB 1555 (1954); *Bambury Fashions, Inc.*, 179 NLRB 447 (1969) and *Pony Express Courier*, 297 NLRB 171 (1989), the Respondent points out the problem of divided loyalty and the threat of distrust between the Union's business interest on the one hand and the interest of the employees, on the other which endangers the bargaining process.

However, in *Wilks-Barre Publishing Co*., 266 NLRB 438 (1983), the competing paper was described as "a successful venture . . . which imposes a serious threat to the competitive position, profitability and perhaps even the existence of the other paper. Moreover, the Board in *Alanis Airport Services*, 316 NLRB 1233 (1995) observed:

In order to find that a union has a disabling conflict of interest, the Board requires a showing of a "clear and present" danger interfering with the bargaining process. The burden on the party seeking to prove this conflict of interest is a heavy one. *Garrison Nursing Home*, 293 NLRB 122 (1989), citing *Quality Inn Waikiki,* 272 NLRB 1, 6 (1984), enfd. 783 F.2d 1444 (9th Cir. 1986).

Here, the Unions have made their intentions and their priorities abundantly clear. Of paramount consideration is their representation of the unit employees, for their intentions have been demonstrated unequivocally and that is the dissolution of the Sunday Journal as soon as the present dispute has been resolved. It is in the truest sense an interim publication. It has an inconsequential effect on the Respondent's publications because of its size, its purpose and its manner of publication. Unlike Respondent's papers, it is published by a not-for-profit organization, only once a week, by volunteer union members who are not paid for their work (except for a few individuals who deliver the paper or those who obtain advertising) and whose publications have decreased and will ultimately cease. In *Adrian Daily Telegram*, 214 NLRB 1103 (1974), the Board has faced a similar situation and decided that a strike newspaper was not a disqualifying competing business. Here, the Sunday Journal exists beyond the strike only because the Union members, having unconditionally surrendered, have not been reinstated, exacerbating the labor dispute. Had the Respondent complied with its legal obligations, the paper would have been dissolved long ago. Justice is not served when an employer can manipulate the Nation's labor laws by rejecting them and violating them with impuguity, but invoking them in a disingenuous attempt to disqualify the Unions as the employees' bargaining representatives.

CONCLUSIONS OF LAW

1. The Respondent, Detroit Newspaper Agency, d/b/a Detroit Newspapers, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Each of the Charging Unions has been a labor organization within the meaning of Section 2(5) of the Act.

3. By unilaterally and without agreement with any of the Charging Unions, and without having reached a valid impasse, implementing its final offers which affected changes in the working conditions of the unit employees, the Respondent has failed and refused to bargain in good faith in violation of Section 8(a)(1) and (5) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Having found that the Respondent unlawfully implemented its final offers which affected the working condition of its unit employees, the Respondent must be ordered to rescind the changes, and return to the wage rates and other terms and conditions of employment in effect in February 1997 and make whole all employees who suffered financial loss as a result of the unilateral changes to be computed in accordance *Ogle Protective Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as computed in *New Horizons for the Retarded,* 283 NLRB 1173 (1978). Any rescission in the terms or conditions of employment must be based on the request of the Charging Unions. In addition, the Respondent must be ordered to bargain collectively and in good faith on request of the Charging Unions.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Detroit Newspaper Agency, d/b/a Detroit Newspapers, Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally, without an agreement with the Unions and without a valid impasse, implementing final offers which affect the employees' working conditions.

(b) Failing and refusing to bargain in good faith with the Unions (Teamsters Local 372, Mailers Union Local 2040, Typographical Union No. 18, GCIU Local No. 13N on behalf of the unit employees).

(c) In any like or related manner interfering with, restraining, or coercing employees in their rights guaranteed under Section 7 of the Act.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request of the Unions rescind the implemented final offer and the resulting changes in the employees' pay and other terms and conditions of employment and make whole any of those employees who may have suffered financial loss as provided in the remedy section of this decision.

(b) On request, bargain collectively and in good faith with the Unions (Detroit Mailers Union No. 2040, International Brotherhood of Teamsters, AFL–CIO, Detroit Typographical Union No. 18, Communications Workers of America, AFL–CIO, GCIU Local Union No. 13 N, Graphic Communications International Union, AFL–CIO, Teamsters Local No. 372, International Brotherhood of Teamsters, AFL–CIO) as the collective–bargaining representatives of the Respondent's employees.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facilities in Detroit, Michigan, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 12, 1997.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT unilaterally, without an agreement with the Unions and without a valid impasse, implement our final offers which affect the employees' working conditions.

WE WILL NOT fail and refuse to bargain in good faith with the Unions on behalf of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in their rights guaranteed under Section 7 of the Act.

WE WILL, on request of the Unions, rescind the implemented final offer and the resulting changes in the employees' pay and other terms and conditions of employment and make whole any of those employees who may have suffered financial loss as provided in the remedy section of this decision.

WE WILL, on request, bargain collectively and in good faith with the Unions (Detroit Mailers Union No. 2040, International Brotherhood of Teamsters, AFL–CIO, Detroit Typographical Union No. 18, Communications Workers of America, AFL–CIO, GCIU Local Union No. 13 N, Graphic Communications International Union, AFL–CIO, Teamsters Local No. 372, International Brotherhood of Teamsters, AFL–CIO) as the collective–bargaining representatives of the Respondent's employees.

DETROIT NEWSPAPERS AGENCY, D/B/A DETROIT NEWSPAPERS